



May 20, 1999

Ms. Bertha Bailey Whatley
Fort Worth Independent School District
100 North University Drive
Forth Worth, Texas 76107

OR99-1396

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124242.

The Fort Worth Independent School District (the "school district") received a request for "all information pertaining to the investigation, evidence collected, police case report number of sexual assault (sic), witness statements and all other documents related to the sexual assault" of a student. You submitted the requested information to this office. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.111, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the submitted documents are excepted from disclosure as "student records." In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, however, you have submitted the information at issue to this office for consideration. Therefore, we will consider whether this information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

“Education records” under FERPA are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). The submitted information pertains to a sexual harassment complaint that one student made against another student. The submitted information constitutes education records under FERPA. Usually FERPA requires an educational agency or institution to obtain the consent of the parents to release the student’s educational records.

Section 1232g(b)(1) of title 20 of the United States Code provides:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following

20 U.S.C. 1232g (b)(1). However, the United States Department of Education has interpreted FERPA to allow a parent the right to inspect and review all information directly related to his child when information concerns two or more students and the information is inseparable. Section 1232g(a)(1)(A) of title 20 of the United States Code provides, in part:

If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.

20 U.S.C. 1232g. As the parents of one of the students to whom some of the information at issue directly relates, the requestors are entitled to inspect and review the documents related to their child.¹

¹You submitted to this office a videotape of the hall at the time of the incident in question. The videotape plays only at a fast forward speed. We have not been able to identify the incident on the videotape. Any videotape containing images of students is covered by FERPA, and the parent of a student who appears on the video tape has the right to review it. Likewise, the submitted audio tape contains information directly related to two students that is inseparable, and the parent of each student may review it.

The remainder of the requested information directly relates only to another student and falls within the definition of education records. Therefore, this information must be withheld from disclosure to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978). We have marked the documents that must be withheld from inspection by the requestor. We have also enclosed for your consideration an opinion of the Family Policy Compliance Office relating to sexual harassment investigations.

You also claim that Confidential Enclosures 1 through 4 are excepted from disclosure by section 552.111 of the Public Information Act. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The information in Enclosures 1 through 4 concern an internal administrative matter. It does not reflect the policymaking processes of the governmental body. Section 552.111 of the act does not exempt from disclosure the documents in Enclosures 1 through 4.

Finally, you assert that a General Complaint Citation of the City of Fort Worth that is marked Enclosure 5 is excepted from disclosure by section 58.007 of the Family Code. Section 58.007 of the Family Code makes certain juvenile law enforcement records confidential. Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Section 51.02(2) defines a child for purposes of Title 3 of the Family Code:

"Child" means a person who is:


(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam Code § 51.02. Section 58.007 deems confidential law enforcement records from all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a child. The General Complaint Citation of the City of Fort Worth marked Enclosure 5 was issued to a seventeen year old, who does not meet the definition of a child under section 51.02 of the Family Code. Consequently, section 58.007 does not apply to this citation. Nor does the citation constitute an "education record" under FERPA. *See* Open Records Decision No. 612 (1992). Because you have raised no other exception to disclosure for this document, we conclude that it must be released. *See also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (documents filed with court are public documents and must be released).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 124242

encl: Submitted documents
Letter from the U.S. Department of Education